IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4727 of 2006

Date of Decision: 20.03.2007

Jaipal & Anr. ..Petitioners

Vs.

Smt.Phoolpati & Anr. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Anil Rathee, Advocate,
for the petitioners.

Mr.V.K.Bali, Advocate,
for respondent No.1.

Vinod K.Sharma,J. (Oral)

Present revision petition has been filed against an order passed by the learned Additional District Judge, Sonepat, accepting the appeal filed by the respondent-defendant against an order passed by the learned Trial Court under Order 39 Rules 1 and 2 of the Code of Civil Procedure vide which temporary injunction was granted in favour of the petitioners during the pendency of the suit.

The petitioners came into possession of the property in

pursuance to the registered sale deed executed on 2.12.2001 for consideration of Rs.2,55,000/- by Balwan who had obtained a decree from the defendant-respondent on 2.10.1996. In pursuance to the said decree mutation was sanctioned in favour of Balwan and on the basis of revenue record the petitioner had purchased the said property from Balwan. The Learned Trial Court, accordingly, finding that the petitioners were in possession of the property granted injunction restraining the defendant from dispossessing the petitioners during the pendency of the suit. Appeal filed by the defendant-respondent was accepted primarily on the ground the sale was effected during the pendency of suit filed by Phoolpati against Balwan challenging the decree passed in his favour. Said suit was decreed in the year 2004.

Learned lower Appellate Court came to the conclusion that as the transfer was during the pendency of the suit and therefore, the sale was hit by the principle of lis pendens and therefore, the petitioners were not entitled to injunction prayed for. However, no finding regarding possession was given, as the learned lower Appellate Court came to the conclusion that as the vendor of the petitioners did not have valid title, therefore, he had no authority to dispose of land in favour of the petitioners-plaintiff.

The question whether the judgment and decree passed in favour of Phoolpati is the subject-matter of the suit and once the petitioners are in possession of the property in pursuance to the sale deed executed in their favour there was no occasion for the learned lower Appellate Court to have reversed the finding recorded by the learned Trial Court.

Accordingly, the revision is allowed and the order passed by

the learned lower Appellate Court is set aside and that of the learned Trial Court is restored.

Nothing stated above shall be considered as an expression of opinion on the merits of the case.

March 20,2007 **(Vinod K.Sharma)**
rp **Judge**